THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :4513 OF 2007

DATED:10-09-2007

BETWEEN:

Nagireddy Achuta Naidu.

..... PETITIONER

AND

The District Panchayat Officer,
Vizianagaram & 3 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioner; learned Government Pleader for Panchayatraj & Rural Development; and the learned counsel appearing for the respondents.

2. Petitioner seeks a writ of mandamus declaring the proceedings of the 2nd respondent issued in Lr.No.664/2006 C, dated 13-11-1006, and the consequential action of leasing out the fishing rights in favour of the 4th respondent Society, as illegal, and contrary to the earlier proceedings of the 1st respondent, dated 04-04-2003, in Lr.No.511/2002B.

3. It is stated that the 3rd respondent-Pedakada Gram Panchayat passed resolution No.4, dated 08-09-2001, to utilize 'Bonivani tank' for drinking purpose. It is stated that pursuant to the said resolution of the 3rd respondent, 2nd respondent-Divisional Panchayat Officer vide his letter No.511/2002, dated 04-04-2003, permitted them to earmark the said tank for drinking purpose of the villagers, cattle, and also for washing purpose. Therefore, it is contended that the action of the Gram Panchayat deciding to auction the fishing rights in the said tank and getting the upset price approved is illegal and arbitrary. It is further stated that under

Section 81 of the A.P.Panchayatraj Act, 1994 (for brevity, 'the Act') Gram Panchayat has got the power to earmark particular tank for drinking purpose and having resolved to utilize the said

tank for drinking purpose there cannot be any justification to utilize the said tank for leasing out the fishing rights in favour of the 4th respondent.

4. The Gram Panchayat filed a counter stating that the earlier Gram Panchayat sent proposals to set apart the said Bonivani tank for drinking and washing purpose by the villagers and accordingly the 2nd respondent vide letter, dated 04-04-2003, informed the Gram Panchayat that the Gram Panchayat is at liberty to set apart the said tank for the purpose of drinking. It is stated that the Gram Panchayat has got power under section 81(1) of the Act to allow the public tank for public purpose i.e., for drinking water by the people and cattle and also for washing clothes but after the said clarification obtained from the 2nd respondent, the Gram Panchayat never set apart the said tank for drinking purpose. It is stated that the earlier Gram Panchayat passed a resolution, however, there is no such resolution earmarking the said tank for drinking purpose. Only a permission was sought for, but after giving necessary permission the Gram Panchayat never passed any resolution setting apart the said tank for drinking purpose. On the other hand, the Gram Panchayat passed resolution No.2, dated 10-07-2002, proposing to lease out the fishing rights along with the other tanks and passed another resolution to get the upset price fixed but the upset price was not fixed. Thereafter, the said tank was not at all earmarked for drinking purpose and it was not being used for drinking purpose. In view of the non usage of the tank by the villagers for drinking purpose, on a representation made by the 4th respondent to auction the fishing rights by fixing the upset price, 2nd respondent, pursuant to the said representation, dated 22-09-2006, passed a

resolution, dated 13-09-2006, unanimously resolving to lease out the fishing rights of the said tank and accordingly sent the proposals except the upset price. The 2nd respondent vide proceedings, dated -11-2006, fixed the upset price for the said tank including all other tanks. Accordingly, the said tank was handed over to the Society by collecting the lease amount. Thus it is stated that there is no resolution setting apart the said tank for drinking purpose.

5. In view of the aforesaid facts and circumstances, I am of the opinion that petitioner being a member of the Gram Panchayat has not questioned the resolutions of the Gram Panchayat, dated 10-07-2002; 17-09-2003; and 13-09-2006, resolving to lease out the fishing rights. In the absence of any order or proceedings setting apart the said tank for fishing rights, I am of the opinion that the petitioner is not entitled for any relief declaring the proceedings of the 2nd respondent fixing the upset price along with the other tanks. I do not see any merits in the Writ Petition.

6. Accordingly the interim suspension granted earlier is vacated and the Writ Petition is dismissed. There shall be no order as to costs.

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V.ESWARAIAH,J

10th September, 2007.

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